

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RODERICK BUTLER,)
) No. 455, 2008
Defendant Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware in
v.) and for New Castle County
)
STATE OF DELAWARE,) Cr. ID. No. 0508015352
)
Plaintiff Below,)
Appellee.)

Submitted: April 15, 2009

Decided: May 19, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 19th day of May 2009, it appears to the Court that:

(1) Roderick Butler, the defendant below, appeals from a Superior Court judge's denial of his motion to dismiss for failure to prosecute. On appeal, Butler argues that the trial judge erroneously failed to apply the *Barker v. Wingo*¹ factors when considering his speedy sentencing claim. We conclude that, although the trial judge only explicitly addressed one of the *Barker* factors, he implicitly

¹ *Barker v. Wingo*, 407 U.S. 514, 530 (1972) (adopted in *Johnson v. State*, 305 A.2d 622, 623 (Del. 1973)). Under *Barker*, a court reviewing a speedy trial claim examines "the conduct of both the State and the defendant, looking primarily at: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant because of the delay. See also *State v. Harris*, 956 A.2d 1273, 1275 (Del. 2005) (applying *Barker* factors to a speedy sentencing claim).

considered the others. After independently considering all of the *Barker* factors, we conclude that all of those factors weigh against Butler. Therefore, we affirm.

(2) On August 17, 2005, police arrested Butler and charged him with multiple offenses in connection with a robbery. Butler's trial began with jury selection on February 7, and the parties gave closing arguments on February 12, 2007. Though present for the evidentiary phase of the trial, Butler fled Delaware before the jury reached its verdict. The jury convicted Butler of Possession of a Deadly Weapon by a Person Prohibited.

(3) On March 16, 2007, a federal and state joint task force apprehended Butler in Philadelphia. On April 24, 2007, the State lodged a detainer against Butler with the U.S. Marshal Service. At that time, Butler was incarcerated at the Federal Correctional Center in Coleman, Florida for a federal parole violation. Before Butler's release from federal prison on October 15, 2007, the State contacted the Sumter County Sheriff's Office in Florida and asked that they detain Butler and charge him as a fugitive. Sumter Sheriff's deputies detained Butler and, on October 16, notified Delaware officials that Butler had refused to waive extradition to Delaware.

(4) On November 13, 2007, the Delaware Attorney General's Office began the extradition process by sending requisition documents to Delaware's Governor for her review. The Governor signed those documents, and, on

December 5, 2007, the Attorney General's Office sent them to Florida's Governor. After receiving that requisition, Florida's Governor requested that the Delaware Attorney General's Office revise the document to include the phrase: "[Butler's presence in Delaware] was desired so that he may be sentenced." After receiving that revised requisition, Florida's Governor authorized Butler's transfer to Delaware authorities. Delaware officials took custody of Butler on April 16.

(5) On May 23, 2008, Butler filed, *pro se*, a motion to dismiss for failure to prosecute and a petition for a writ of habeas corpus. The trial judge denied both applications but referred the motion to dismiss to Butler's counsel, who then filed another motion to dismiss on Butler's behalf. On August 15, 2008, at sentencing, the trial judge denied Butler's motion to dismiss. Butler timely appeals from that denial.

(6) Before the trial judge, Butler argued, *inter alia*, that the six month delay between his release by federal authorities and his return to Delaware's custody, violated his constitutional right to speedy sentencing. The trial judge denied Butler's motion, reasoning:

The defendant has moved to dismiss this criminal action on grounds of undue delay. This part of the case actually began when Mr. Butler absconded from trial. He was free on bail and we went through the trial, and Mr. Butler took off before the verdict came in. He was apprehended some months later, but because he had been convicted he was also now a federal parole violator and the federal system sentenced him to incarceration for a parole violation. He was about to be released – he was released from that parole violation, but was then

rearrested on the warrant that had been issued by Delaware. He did not waive extradition, insisted on extradition, and that resulted in some additional delay.

I find that his actions in absconding from the State of Delaware before the verdict was taken, in demanding extradition, in failing at any earlier stages of the proceedings to demand a sentencing proceeding amounts to a waiver of any rights he may have with regard to undue delay. The motion is denied for those reasons.

(7) On appeal, Butler argues that the trial judge legally erred by failing to apply the *Barker v. Wingo* factors to his speedy sentencing claim. Butler asks us to reverse the trial judge's denial of his motion to dismiss and remand with instructions to consider the *Barker* factors. The State responds that the trial judge adequately explained his ruling and that we may apply the *Barker* factors directly and affirm on that basis.²

(8) We conclude that the record, taken as a whole, demonstrates that the trial court implicitly considered all of the *Barker* factors. Nevertheless, we explicitly address those factors below.

(9) We review an alleged infringement of a constitutional right *de novo*,³ and assume that the Sixth Amendment to the United States Constitution provides

² See *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (“[T]his Court may affirm on the basis of a different rationale than that which was articulated by the trial court. We also recognize that this Court may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court.”). In this case, Butler's speedy sentencing claim and the application of *Barker* was fairly presented to the trial court in Butler's motion to dismiss.

³ *Harris*, 956 at 1275.

defendants with a right to speedy sentencing.⁴ We analyze speedy sentencing claims in the same manner as speedy trial claims.⁵ On a case by case basis, we analyze speedy sentencing claims by applying the *Barker* factors: “(1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant because of the delay.”⁶ In the speedy sentencing context, “[t]he alteration of defendant’s status from accused and presumed innocent to guilty and awaiting sentence is a significant change which must be taken into account in the balancing process.”⁷

(10) The first *Barker* factor—“the length of the delay”— weighs against Butler. Florida authorities confined Butler for approximately six months before his extradition to Delaware. We have held, in the speedy trial context, that delays under a year in length are not unreasonable.⁸ Although the State may have delayed somewhat in preparing the documents necessary to extradite Butler, that delay is not of constitutional dimension.⁹

⁴ *Id.*

⁵ *Id.*

⁶ *See id.* (citing *Barker*, 407 U.S. at 521).

⁷ *Id.*

⁸ *See Michaels, et. al. v. State*, 2009 WL 684142, at *8 (citing *Malin v. State*, 2008 WL 2429114, at *2 (Del.); *Skinner v. State*, 575 A.2d 1108, 1116 (Del. 1990)).

⁹ *Id.* (holding that a nearly 11 month delay between arrest and trial was regrettable, but not a constitutional violation).

(11) The trial judge explicitly considered the second *Barker* factor—“the reason for the delay”—and found that Butler’s flight from Delaware and refusal to waive extradition should be weighed against him. We agree. Butler argues that he had every right to refuse to waive extradition and insist that Delaware follow the full extradition process. That may be, but “ha[ving] [exercised his] right to resist extradition back to Delaware . . . he cannot complain about the result of his exercise of that right.”¹⁰ It is well established that “a defendant who prolongs a matter can not then blame the result solely on the acts or omissions of the prosecution.”¹¹ Even if the State could have been more expeditious in seeking Butler’s extradition, Butler caused any resulting delay by insisting that the formalities of the extradition process be observed.

(12) The third *Barker* factor—“the defendant’s assertion of his right”—also weighs against Butler. Butler did not assert his speedy sentencing claim until six weeks after he returned to Delaware. Butler had an obligation “to call attention to what he view[ed] as an unfair postponement.”¹² Although failure to demand a speedy sentencing does not operate as a waiver, lack of protest makes it difficult

¹⁰ *State v. Miller*, 1991 WL 89785, at *3 (Del. Super. May 1, 1991).

¹¹ *State v. Key*, 463 A.2d 633, 637 (Del. 1983) (citations omitted).

¹² *Harris*, 956 A.2d at 1277.

for a defendant to prove that the State violated his speedy sentencing rights.¹³ Had Butler more timely asserted his speedy sentencing rights, the State could have devoted more resources to his extradition process and returned Butler to Delaware sooner. Although Butler eventually invoked his speedy sentencing rights, his initial and prolonged silence weighs against him.

(13) The final *Barker* factor—“prejudice to the defendant because of the delay”—also weighs against Butler. In the speedy trial context we consider three interests of the defendant: “(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired”¹⁴ Those interests are diminished where, as here, the defendant has already been convicted.¹⁵ Having already been convicted, Butler’s only applicable interest is minimizing his anxiety and concern. Here, Butler’s Delaware conviction carried a mandatory minimum five year sentence, and the time he spent in the custody of Florida authorities was credited toward his Delaware sentence. Therefore, the only anxiety and concern that Butler suffered was that which was inherently associated with his conviction. That inherent anxiety does not rise to the level of cognizable prejudice.

¹³ *Id.*

¹⁴ *Id.* at 1278.

¹⁵ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice